

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
TEXARKANA DIVISION**

ARLON DAVID SIMPSON

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

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Civil Action No. 5:05CV137

Judge David Folsom

Magistrate Judge Caroline Craven

RESPONSE TO PETITION FOR WRIT OF HABEAS CORPUS

COMES NOW the Respondent, by and through the undersigned Assistant United States Attorney, and responds to the Petition for Writ of Habeas Corpus in the above-styled and numbered cause. For the reasons set forth in the incorporated Memorandum of Law, Respondent respectfully requests that the petition be denied as Petitioner has inappropriately filed this petition for writ of habeas corpus pursuant to 28 U.S.C. 2241.

MEMORANDUM OF LAW

I. Background information

A. Petitioner

The petitioner is Arlon David Simpson (a/k/a David Arlan Simpson), Register Number 17463-076. He is currently incarcerated at the Federal Correctional Institution in Texarkana, Texas (FCI - Texarkana). A criminal judgment was entered against Petitioner Simpson in the United States District Court for the Western District of Tennessee to a 135 month concurrent sentence with a 3 year concurrent term of supervision based on a guilty plea of Interstate Transportation of Visual Depictions of Minors Engaging in Sexually Explicit Conduct in violation of 18 U.S.C. 2252(a)(1),

Possession of Items shipped in Interstate Commerce which Contain Visual Depictions of Minors Engaging in Sexually Explicit Conduct in violation of 18 U.S.C. 2252(a)(4)(B), Interstate Travel with Intent to Engage in Sexual Acts with a Minor in violation of 18 U.S.C. 2423(b), and Attempt to Entice a Minor to Engage in Sexual Activity by use of a Facility and Means of Interstate Commerce in violation of 18 U.S.C. 2242(b) and 2.

B. Respondent

The petitioner has named the United States of America as the respondent. Title 28 U.S.C. 2242 provides that the proper respondent in a habeas corpus proceeding is the warden having custody of the prisoner. See Guerra v. Meese, 786 F.2d 414 (D.C. Cir.1986), Brown v. Neagle, 486 F.Supp. 364 (S.D.W.Va. 1979). David G. Justice is the warden of FCI Texarkana. Therefore, David G. Justice should be named as the proper respondent.

II. Subject Matter Jurisdiction

Petitioner Simpson has inappropriately filed this petition for writ of habeas corpus pursuant to 28 U.S.C. 2241.

Petitioner Simpson is challenging his sentence, in particular the sentence enhancements. Section 2241 is an inappropriate jurisdictional basis to hear a challenge of conviction as this statute provides for challenges to the condition of which an inmate serves his sentence. United States v. Cleto, 956 F.2d 83 (5th Cir. 1992). Section 2255 is the primary means of challenging the validity of a sentence. Cox v. Warden, Federal Detention Center, 911 F.2d 1111 (5th Cir. 1990). An action under Section 2241 which attacks a federally imposed sentence may be considered if the petitioner establishes the remedy under Section 2255 is inadequate or ineffective. Cox, 911 F.2d at 1113. Petitioner Simpson has not provided evidence that Section 2255 is inadequate or ineffective to

address his claims.

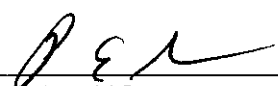
III. Conclusion

Petitioner's claims in the Petition for Writ of Habeas Corpus are without merit, and therefore, Respondent respectfully requests that the Petition for Writ of Habeas Corpus be **DISMISSED** in its entirety.

WHEREFORE, Respondent respectfully requests that the Petition for Writ of Habeas Corpus be denied.

Respectfully submitted,

MATTHEW D. ORWIG
UNITED STATES ATTORNEY



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CERTIFICATE OF SERVICE

I hereby certify that on this 21st day of September, 2005, a true and correct copy of the foregoing ***Response to Writ of Habeas Corpus*** has been served by United States mail, to the pro se plaintiff as follows:

Arlon David Simpson #17463-076
Federal Correction Institute
P.O. Box 7000
Texarkana, TX 75505



PAUL E. NAMAN
Assistant United States Attorney